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In the Supreme Court of the United States

MID-CON FREIGHT SYSTEMS, INC., ET AL., PETITIONERS

v.

MICHIGAN PUBLIC SERVICE COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

The State of Michigan imposes upon motor carriers a $100 annual fee for each vehicle license-plated in the State and "operating entirely in interstate commerce." Mich. Comp. Laws Ann. § 478.2(2) (West 2002). The question presented in this case is as follows:

Whether the $100 fee upon vehicles operating solely in interstate commerce is preempted by 49 U.S.C. 14504.

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INTEREST OF THE UNITED STATES

This case presents the question whether a $100 annual fee imposed by the State of Michigan on each commercial motor vehicle "registered in this state and operating entirely in interstate commerce," Mich. Comp. Laws Ann. (MCL) § 478.2(2) (West 2002), is preempted by the federal law that governs the Single State Registration System (SSRS) for commercial motor vehicles. The United States has a substantial interest in the Court's resolution of that question. Congress has assigned responsibility for administration of the SSRS to the Secretary of Transportation, see 49 U.S.C. 14504, and the Court's resolution of the preemption issue presented here may have a significant economic impact upon interstate motor carriers. At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage of this case.

STATEMENT

1. Congress has long required motor carriers operating in interstate commerce to obtain a certificate of public convenience and necessity or comparable form of authorization from the federal government. "[I]n 1965, Congress authorized States to require interstate motor carriers operating within their borders to register with the State their Interstate Commerce Commission (ICC) operating permits." *Yellow Transp., Inc.* v. *Michigan*, 537 U.S. 36, 39 (2002); see Pub. L. No. 89-170, § 2, 79 Stat. 648 (49 U.S.C. 302(b)(2) (1970)). Congress provided that such a requirement by a State to register an ICC certificate or permit "shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with standards * * * promulgated by the Commission." *Ibid.*; see *Yellow Transp.*, 537 U.S. at 39. Former Section 302(b)(2) further provided: "To the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall * * * constitute an undue burden on interstate commerce." 49 U.S.C. 302(b)(2) (1970).[1]

[1] The Chairman of the House Committee on Interstate and Foreign Commerce stated, with respect to the 1965 law that specifically authorized the States to require registration of an interstate carrier's ICC certificate, that such registration would "encourage greater participation by the States in curbing illegal for-hire trucking" by enabling state officials to identify motor carriers operating in interstate commerce without the requisite federal authority. 111 Cong. Rec. 9672 (1965) (Rep. Harris). It appears that some States were requiring interstate carriers to register their ICC certificates even before the 1965 legislation was enacted. The House Report accompanying the relevant bill explained that, "[a]t present, registration requirements differ widely among the States; and this circumstance alone may impose undue burdens on carriers. Therefore, enactment of this legislation is necessary in order that relief from this multiplicity of different State registration requirements be achieved." H.R. Rep. No. 253, 89th Cong., 1st Sess. 10 (1965).

In its rules implementing Section 302(b) and its statutory successors, the ICC initially imposed a $5-per-vehicle cap on the fee that a State could charge for registration of a carrier's ICC certificate. See 49 C.F.R. 1023.33 (1971). That limit was subsequently increased to $10 per vehicle. See 47 Fed. Reg. 8365-8366 (1982); 49 C.F.R. 1023.33 (1982); *Yellow Transp.*, 537 U.S. at 39. The means by which registration was accomplished under the ICC's rules came to be known as the "bingo card" system because each State issued a stamp for each vehicle operating within its borders, and the motor carrier affixed the stamp to a card carried in the vehicle, as proof of registration. 49 C.F.R. 1023.32 (1992); *Yellow Transp.*, 537 U.S. at 39.

The $10-per-vehicle fee for registering an interstate motor carrier's federal certificate has never been regarded as the only state "registration" fee that the carrier may be required to pay. A motor vehicle operating in interstate commerce is always required to have a license plate from some State, and the fees charged for that registration and plating of commercial trucks can run into the hundreds or even thousands of dollars. See, *e.g.*, *American Trucking Ass'ns* v. *Scheiner*, 483 U.S. 266, 271, 282 (1987) (noting that Pennsylvania's registration fees for some commercial trucks were as high as $1125 during the years 1980-1982, and that "[t]he State's vehicle registration fee has its counterpart in every other State and the District of Columbia").

Congress has encouraged States to join the International Registration Plan (IRP), a reciprocity agreement among the States of the United States and the provinces of Canada for the registration/license-plating of commercial motor vehicles. See 49 U.S.C. 31704; *Scheiner*, 483 U.S. at 271. Under the IRP, a commercial motor vehicle is registered and

license-plated in a single State; it can then travel freely through other participating States for which an IRP registration fee has been paid without registering separately in each; and the State of registration apportions the registration fees among the other States in which the vehicle traveled during the prior year in proportion to the volume of miles traveled. *Id.* at 271-272 & n.6; see MCL § 257.801g (West 2001) (provision of Michigan law governing registration of vehicles with the Secretary of State and apportionment of fees under the IRP). All 48 contiguous States currently participate in the IRP. Federal law provides that "Section[] 31704 * * * of [Title 49] do[es] not limit the amount of money a State may charge for registration of a commercial motor vehicle." 49 U.S.C. 31707.

2. In 1991, in order to reduce the administrative burdens that the bingo card system had imposed on interstate motor carriers, Congress directed the ICC to implement a new system, called the Single State Registration System (SSRS), under which a motor carrier operating in interstate commerce "is required to register annually with only one State by providing evidence of its Federal registration." 49 U.S.C. 14504(c)(1)(A). To register under the SSRS, the carrier submits evidence of its federal operating authority, proof of insurance or qualification as a self-insurer, the appropriate registration fees, and the name of a local agent for service of process. 49 U.S.C. 14504(c)(2)(A)(i)-(iv). The carrier must also inform the registration State of "[t]he number of motor vehicles [the carrier] intends to operate in each participating State during the next registration year." 49 C.F.R. 367.4(c)(4)(i); see 49 U.S.C. 14504(c)(2)(B)(iv)(I). SSRS registration does not, however, require the identification or registration of specific vehicles. Indeed, the statute provides that the standards promulgated by the Secretary for SSRS registration "shall not require decals, stamps, cab cards, or any other means of registering or identifying

specific vehicles operated by the carrier." See 49 U.S.C. 14504(c)(2)(B)(iii).[2]

Under the SSRS, each participating State may charge a fee, "equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. 14504(c)(2)(B)(iv)(III).[3] That fee, however, may now be charged only for filing the required proof of insurance. See 49 U.S.C. 14504(c)(2)(A)(ii), 14504(c)(2)(B)(iv). No fee may be charged for filing the evidence of federal registration itself. 49 U.S.C. 14504(c)(2)(B)(v). The fees are collected by the State in which the carrier is registered for SSRS purposes, which then is responsible for distributing the money among the other States through which the vehicle travels. 49 C.F.R. 367.6(a). A motor carrier is required to select "the State in which it maintains its principal place of business" as its SSRS registration State, unless that State is not a participant in the SSRS. 49 C.F.R. 367.3(a).[4]

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[2] Information as to the aggregate number of vehicles the carrier intends to operate in each State is necessary both to compute the carrier's total SSRS fee and to enable the registration State to apportion that fee among the various States in which the carrier's vehicles operate.

[3] The 39 States that participated in the bingo card system as of January 1, 1991, are eligible to participate in the SSRS. 49 U.S.C. 14504(c)(2)(D). The 11 ineligible States are listed in H.R. Rep. No. 171, 102d Cong., 1st Sess. Pt. 1, at 49 (1991). Oregon is eligible to participate but does not do so. Thus, 38 States participate in the SSRS program.

[4] The State in which the carrier is registered for purposes of the SSRS, see 49 C.F.R. 367.3(a), will not necessarily be the same as the State in which the vehicles operated by the carrier are registered (*i.e.*, license-plated) for purposes of the IRP. Under the IRP, a carrier's "base jurisdiction" for license-plating purposes is "the jurisdiction where the registrant has an established place of business, where distance is accrued by the fleet and where operational records of such fleet are maintained or can be made available." International Registration Plan, Inc., *International Registration Plan* § 210 (revised Oct. 1, 2004). That provision will often give large carriers considerable discretion in choosing the State in which their vehicles will be license-plated. See *Single State Ins. Registration*, 9 I.C.C. 2d 610, 620-621 (1993) (recognizing that the "principal place of

When Congress abolished the ICC in 1995, it assigned authority to administer the SSRS to the Secretary of Transportation. *Yellow Transp.*, 537 U.S. at 39-40 n.* (citing ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803). In its current form, the Title 49 provision that establishes the SSRS provides in pertinent part as follows:

> The requirement of a State that a motor carrier, providing [interstate] transportation * * * and providing transportation in that State, must register with the State is not an unreasonable burden on [interstate] transportation * * * when the State registration is completed under standards of the Secretary [of Transportation] under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

49 U.S.C. 14504(b). The statute further states that "[t]he charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce." 49 U.S.C. 14504(c)(2)(C).

3. The provision of Michigan law through which that State implements the SSRS is MCL § 478.7. That provision was enacted in 1988 (and amended in 1989), before the SSRS was enacted by Congress in 1991, see MCL § 478.7 (Historical and Statutory Notes), and is administered by respondent Michigan Public Service Commission (MPSC). Subsection (1) of MCL § 478.7 provides that "[a] motor carrier shall not engage in interstate or foreign transportation of property for compensation without first having registered with

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business" test for SSRS registration will give carriers less flexibility to choose a registration State than is available under the IRP, but rejecting a commenter's suggestion that the IRP rule for selection of a registration State should be adopted for purposes of the SSRS).

the [MPSC] and paid the required registration and vehicle fees." Subsection (2) provides that a motor carrier operating in Michigan under authority granted by the ICC "shall file and maintain a record of that authority with the [MPSC]." Although this provision on its face continues to require *every* carrier operating in interstate commerce within the borders of Michigan to file evidence of its federal certificate with the State, it apparently has been administered by the MPSC, since the SSRS went into effect, in a manner that is consistent with the SSRS—*i.e.*, to provide for the filing of the proof of federal registration and associated information with the MPSC only when the carrier selects Michigan as its single registration State in accordance with the SSRS. See J.A. 26-27.

Subsection (4) of MCL § 478.7 provides that "[t]he annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in *another* state or province of Canada shall be $10." MCL § 478.7(4) (emphasis added). That provision is consistent with the $10 cap now in effect under the SSRS. As is clear from its text, however, MCL § 478.7(4) does not apply to vehicles that are operating in interstate commerce and are licensed-plated in *Michigan*. The fee requirement for such vehicles is instead contained in MCL § 478.2(2), the specific provision of Michigan law at issue in this case. Under that provision, Michigan imposes "an annual fee of $100.00 for each vehicle operated by the motor carrier which is registered in this state and operating entirely in interstate commerce." It is undisputed that the statutory phrase "registered in this state" refers to commercial motor vehicles *license-plated* in Michigan, not to vehicles that are license-plated in other States but are operated by carriers for whom Michigan is the SSRS registration State. See J.A. 59 (affidavit of state official explains that, "[h]istorically, the Michigan Public Service Commission [MPSC] has interpreted MCL 478.2(2)'s applicability re-

quirement of 'vehicles registered in Michigan' to mean vehicles which have Michigan license plates obtained through the Michigan Secretary of State"); J.A. 24, 27, 57, 67; Pet. 6 n.3, 23-24; Br. in Opp. 2, 11, 17, 19, 20.

The applicability of the two different fees imposed on trucks operating in interstate commerce within Michigan's borders is reflected in the SSRS registration form utilized by the MPSC. See J.A. 65-67. That form states that "ICC [now DOT] carriers with vehicles based outside of Michigan must register those vehicles on this form at a fee of $10.00 per vehicle," but that "[v]ehicles based in Michigan are required to have a $100.00 MPSC decal (Household Goods carriers $50)." J.A. 67 n.* For the latter vehicles, the Michigan SSRS form directs the registering interstate carrier to "[u]se Equipment List (form P-344-T) to order MPSC decals." *Ibid.*

4. Petitioners filed suit in the Michigan Court of Claims, contending that MCL § 478.2(2) imposes a registration fee in excess of the $10-per-vehicle SSRS maximum and is therefore preempted by 49 U.S.C. 14504. The Court of Claims denied petitioners' motion for summary judgment. Pet. App. 36-50. The court held that MCL § 478.2(2) is not preempted by federal law because Section 478.2(2)

> applies only to vehicles registered in Michigan by Michigan-licensed motor carriers, i.e., where Michigan is the "registering state." The SSRS fee system places a $10.00 annual vehicle fee limit on only the "participating states," however, not on the "registering state." The SSRS neither prohibits nor preempts [MCL § 478.2(2)'s] vehicle fee.

Pet. App. 46. The Michigan Court of Claims subsequently granted the State's motion for summary disposition, *id.* at 54-56, and denied petitioners' motion for reconsideration, *id.* at 57-72. In its order denying reconsideration, the court

reiterated its previously stated view that "[t]he fee limits that were imposed" by the SSRS and its statutory predecessors "applied only to states where the vehicles were not based and registered." *Id.* at 68.

5. The Michigan Court of Appeals affirmed. J.A. 68-102. The court rejected the view of the Michigan Court of Claims that the SSRS $10-per-vehicle limit is inapplicable to fees charged by the "registration state." J.A. 80-82. The court explained that "when the [federal] statute states that a participating state may not charge a fee in excess of $10, this includes the registration state. To conclude otherwise, that a registration state could set its own fee, would contravene the express language and purpose of the statute." J.A. 82.

The Michigan Court of Appeals held, however, that the $100 annual fee imposed by MCL § 478.2(2) on vehicles license-plated in the State and operating solely in interstate commerce is a "regulatory fee" rather than a "registration fee" and therefore is not preempted by 49 U.S.C. 14504. J.A. 83-85. The court explained that

> the $100 interstate fee could reasonably be classified as a regulatory fee because it is a fee imposed for the administration of the [state Motor Carrier Act], particularly covering costs of enforcing safety regulations. If the purpose of a fee is to regulate an industry or service, it can be properly classified as a regulatory fee. Because the fee in MCL 478.2(2) is not a registration fee, it is not subject to preemption.

J.A. 83-84 (footnote and citation omitted).[5]

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[5] Under MCL § 478.2(1), the State also imposes "an annual fee of $100.00 for each self-propelled motor vehicle operated by or on behalf of" a licensed motor carrier. In the courts below, that provision was the subject of a separate challenge brought under the Commerce Clause. Although Section 478.2(1) does not on its face make the applicability of the fee dependent on the nature of the routes that a particular vehicle travels, the

6. The Michigan Supreme Court denied petitioners' application for leave to appeal. Pet. App. 73-75.

SUMMARY OF ARGUMENT

A. Since 1965, federal law has expressly authorized States to require interstate motor carriers to register proof of their federal operating permits, but has limited the fees that a State may charge in connection with that registration process. The $10-per-vehicle limit on such fees, first imposed by ICC regulation and subsequently adopted by Congress (see 49 U.S.C. 14504(c)(2)(B)(iv)(III)), ensures that States do not use the registration of federal operating authority as a means to impose disproportionate burdens on interstate carriage. The limit thus serves an important federal interest, even though States remain free to subject interstate carriers to a variety of fees and attendant administrative requirements, so long as those burdens are imposed on intrastate carriers as well.

B. As amended in 1978 and again in 1991, the current SSRS preemption provision is worded more broadly than was the predecessor provision contained in 49 U.S.C. 302(b)(2) (1970). Whereas former Section 302(b)(2) preempted "State requirements for registration of motor carrier certificates or permits issued by the [ICC]" to the extent that such requirements exceeded ICC standards, current 49 U.S.C. 14504(b) more generally encompasses "State registration requirement[s]" that "impose[] obligations in excess of the standards of the Secretary" of Transportation. The statute in its current form thus preempts state laws that require interstate carriers to register with the State on account of their interstate operations, except in accordance with the standards governing the SSRS, whether or not the relevant state law specifically requires registration of the carrier's federal operating authority.

C. MCL § 478.2(2) is preempted by federal law because it imposes the very sort of exorbitant and discriminatory burden on interstate commerce that the SSRS $10-per-vehicle limit is intended to prevent. Section 478.2(2) is a "State registration requirement" within the meaning of 49 U.S.C. 14504(b), and the fee it imposes plainly exceeds the $10-per-vehicle limit established by the governing federal statute and the Secretary of Transportation's implementing regulations. MCL § 478.2(2) is therefore expressly preempted by 49 U.S.C. 14504(b). But even if the term "State registration requirement" were construed not to encompass the challenged fee, MCL § 478.2(2) would be impliedly preempted because it subverts the congressional policy judgment reflected in the SSRS.

D. The fact that fees collected under MCL § 478.2(2) are subsequently used by the State for highway-related purposes is irrelevant to the preemption analysis. Like its statutory and regulatory predecessors, 49 U.S.C. 14504 limits the amount of the fee that a State may collect in certain circumstances but does not constrain the State's subsequent use of the money it receives. Because MCL § 478.2(2) effects precisely the singling out of interstate commerce that the $10-per-vehicle SSRS registration limit was intended to prevent, it is preempted by federal law, regardless of the use to which the funds are subsequently put.

E. The $100-per-vehicle fee under MCL § 478.2(2) is not saved from preemption by the fact that it is imposed only upon commercial motor vehicles license-plated in Michigan.

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parties to that dispute agree that, in practice, the State imposes the fee only upon vehicles that engage at least in part in "intrastate" operations —*i.e.*, vehicles that make at least one delivery during the year between two points within the State of Michigan. See J.A. 22-23; 03-1230 Pet. at 3. The Michigan Court of Appeals rejected the constitutional challenge to Section 478.2(1), see J.A. 98-102, and this Court has granted certiorari to review the question. See *American Trucking Ass'ns* v. *Michigan Pub. Serv. Comm'n*, No. 03-1230 (Jan. 14, 2005).

Nothing in the text or history of 49 U.S.C. 14504 suggests that the SSRS fee limit is inapplicable to vehicles license-plated in the charging State, and any such exception would subvert Congress's effort to prevent discrimination against interstate carriage. Nor does MCL § 478.2(1), under which the State imposes a $100 annual fee on *other* Michigan-plated commercial motor vehicles, provide a basis for disregarding the facially discriminatory character of MCL § 478.2(2).

ARGUMENT

THE $100 ANNUAL FEE IMPOSED BY MCL § 478.2(2) ON MOTOR VEHICLES LICENSE-PLATED WITHIN THE STATE AND "OPERATING ENTIRELY IN INTERSTATE COMMERCE" IS PREEMPTED BY 49 U.S.C. 14504

The terms "register" and "registration" are a potential source of confusion in this case because a motor carrier operating in interstate commerce must comply with two distinct registration requirements. For purposes of the SSRS, the carrier registers in a single State (typically the State in which the carrier has its principal place of business, see 49 C.F.R. 367.3(a)) by submitting evidence of its federal operating authority, proof of insurance or qualification as a self-insurer, the appropriate fees (up to $10 per vehicle for each State in which the vehicle will operate), and the name of a local agent for service of process. 49 U.S.C. 14504(c)(2)(A)(i)-(iv); see p. 4, *supra*. In order for its SSRS fees to be computed and properly apportioned among the States in which its vehicles travel, the carrier must identify the *number* of vehicles that it intends to operate in each of the participating States. The carrier's obligations under the SSRS, however, do not include any duty to identify or register specific motor vehicles. See pp. 4-5 & note 2, *supra*.

Each motor vehicle operating in interstate commerce is also subject to the separate, generally applicable state-law

requirement—which applies as well to non-commercial motor vehicles (*e.g.*, passenger cars) and to commercial motor vehicles operating wholly intrastate—that the individual vehicle must be registered in some State, and that the operator must obtain a license plate for the vehicle in connection with that distinct state registration process. The fees charged for that registration and for issuance of a license plate may run into the hundreds or even thousands of dollars for large commercial motor vehicles. The State in which a particular vehicle is license-plated will sometimes, but not always, be the same as the operating carrier's SSRS registration State. Under current law and practice, license-plating of motor vehicles used in interstate commerce is typically accomplished by the base-plating State in accordance with the IRP. For present purposes, the salient features of the IRP are that (a) each vehicle is license-plated in a single State, (b) a fee for each State in which the vehicle is to be operated is paid to the license-plating State's IRP administrative office, (c) the vehicle may then travel freely throughout the States for which IRP registration has been paid, and (d) the total registration fee collected by the license-plating State is apportioned on the basis of mileage traveled among the various States in which the vehicle operates. See IRP §§ 102, 104, 300, 400; *American Trucking Ass'ns* v. *Scheiner*, 483 U.S. 266, 271-272 & n.6 (1987); pp. 3-4, *supra*.

The Michigan statutory provision that is at issue in this case implicates both types of registration procedures. MCL § 478.2(2) applies only to motor vehicles that are "registered" (in the sense of license-plated) in the State of Michigan. See pp. 7-8, *supra*. Under most circumstances, the federal statutory provision (49 U.S.C. 14504) governing the SSRS would not limit the authority of the license-plating State to assess any otherwise lawful fees that it chose to levy in connection with that separate "registration" process.

MCL § 478.2(2)'s $100 annual fee is imposed, however, not upon Michigan-plated vehicles generally, but only upon those that "operat[e] entirely in interstate commerce." Because Section 478.2(2) is triggered by interstate operations, it is in conflict with the express terms of 49 U.S.C. 14504(b) and with the concerns that underlie that provision and its $10-per-vehicle maximum for SSRS registration. MCL § 478.2(2) therefore is preempted by federal law.

A. The $10-Per-Vehicle Limit For State Registration Of Interstate Carriers Under The SSRS Serves To Prevent States From Imposing Distinct Or Disproportionate Burdens On Interstate Commerce

1. In 1965, Congress expressly authorized each State to require an interstate motor carrier operating within its jurisdiction to "register its certificate of public convenience and necessity or permit issued by the [ICC]." Pub. L. No. 89-170, 79 Stat. 648 (49 U.S.C. 302(b)(2) (1970)). The 1965 statute provided that such registration requirements "shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with standards * * * promulgated by the [ICC]." *Ibid.* That basic authorization has remained in place for the past 40 years, though the adoption of the SSRS has streamlined the process by which registration is accomplished.

The fees that a State may charge in connection with that registration process, however, have consistently been limited by federal law. Thus, the 1965 statute that initially authorized the States to require registration of a carrier's federal operating authority provided: "To the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall * * * constitute an undue

burden on interstate commerce." 49 U.S.C. 302(b)(2) (1970). In implementing former Section 302(b), the ICC initially adopted rules setting a $5-per-vehicle maximum on the fee that a State could charge for registration of a carrier's ICC certificate. The ICC subsequently raised that cap to $10 per vehicle, and the $10-per-vehicle regulatory limit remained in effect until it was adopted by Congress in 1991. See pp. 3, 4-5, *supra*; 49 U.S.C. 14504(c)(2)(B).

2. Congress had good reason to focus on state requirements for registration of ICC certificates and on the fees charged by States for such registration. The distinctive feature of carriers having such certificates (or, under the current statutory regime, carriers registered by the Secretary of Transportation, see 49 U.S.C. 13901, 13902) is that they operate *in interstate commerce*. States historically have been prohibited by the Commerce Clause from regulating interstate commerce as such. They are also prohibited by the Commerce Clause from discriminating against out-of-State commercial entities, see, *e.g.*, *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U.S. 175, 197 (1995) ("States are barred from discriminating against foreign enterprises competing with local businesses."), or against in-State commercial entities based on their participation in interstate commerce, see, *e.g.*, *Camps Newfound/Owatonna, Inc.* v. *Town of Harrison*, 520 U.S. 564, 576 (1997) (State violates the Commerce Clause when it "distinguishes between entities that serve a principally interstate clientele and those that primarily serve an intrastate market"). Any attempt by a State to single out interstate motor carriers as such, or to impose requirements on such carriers that it does not impose on similarly situated intrastate operators, thus would raise substantial constitutional and policy concerns.

Specific federal authorization for States to require interstate carriers to register their federal certificates—a requirement that by its nature would have no application to

purely intrastate operators—eliminated any potential Commerce Clause objection to such a registration requirement. See 49 U.S.C. 302(b)(2) (1970) (requirement that interstate carrier register its federal certificate with the State "shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with [ICC] standards"). But if States were vested with *unrestricted* authority to require registration of an interstate operator's federal certificate, they might use that authority to subject interstate carriers to burdensome filing requirements and exorbitant fees that are not imposed on intrastate businesses. The $10-per-vehicle limit on fees for registration of ICC certificates or comparable federal operating authority thus serves the important federal interest in protecting interstate commerce against the imposition of distinct or discriminatory burdens. States remain free under the Commerce Clause, however, to levy a variety of other fees and taxes, including fees for the license-plating of individual vehicles, that do not single out carriers or vehicles operating in interstate commerce for discriminatory burdens.

The question in this case is whether the $100 annual fee imposed by MCL § 478.2(2) on Michigan-plated trucks operating entirely in interstate commerce is preempted by 49 U.S.C. 14504, the current version of the federal statute authorizing a State to require an interstate carrier to file evidence of its federal registration with the State, even though MCL § 478.2(2) does not specifically link the payment of the fee to the carrier's filing of its federal registration. As explained in Points B and C below, 49 U.S.C. 14504 preempts any state registration requirement imposed on an interstate carrier by reason of its interstate operations, and therefore preempts MCL § 478.2(2).

B. Section 14504(b) Preempts Any State Registration Requirement Imposed On Interstate Motor Carriers By Reason Of Their Interstate Operations

1. In 1978, as part of a revision and recodification of Title 49, Congress carried forward the provision in former 49 U.S.C. 302(b)(2) that a state-law requirement for an interstate carrier to register its ICC certificate or permit with the State is not an unreasonable burden on interstate commerce if the State's registration requirements are consistent with standards adopted by the ICC. See 49 U.S.C. 11506(b) (1982). The next sentence then stated: "When a State registration requirement imposes obligations in excess of the standards [of the ICC], the part in excess is an unreasonable burden." *Ibid.* The wording of this latter sentence was revised from the corresponding sentence in its predecessor, 49 U.S.C. 302(b)(2) (1970). Whereas the predecessor had provided that "state requirements for registration of motor carrier certificates or permits issued by the [ICC]" were an undue burden on interstate commerce to the extent they were in excess of ICC standards, the 1982 version provided that a "State registration requirement" was an undue burden on interstate commerce to the extent it imposed obligations in excess of the ICC standards.

It is unclear whether this change in language was intended to have any operative effect. On the one hand, the 1982 Act of Congress that enacted the overall revision was entitled "An Act To revise, codify, and enact *without substantive change* the Interstate Commerce Act and related laws as subtitle IV of title 49, United States Code, 'Transportation.'' Pub. L. No. 95-473, 92 Stat. 1337 (emphasis added). On the other hand, the Reviser's Notes explaining the revision and recodification state that the revision of the language in the particular sentence at issue here was made "*for clarity.*" 49 U.S.C. 11506 note (1982) (emphasis added). This explanation could be read to suggest that the new

reference in the second sentence to "State registration requirement" was meant to clarify an intent that was perhaps thought to be implicit in the prior 49 U.S.C. 302(b)(2)—namely, that the federal statute preempted *any* state registration requirement (not merely a state registration requirement specifically applicable to the filing of the carrier's ICC certificate) that was imposed on a carrier by reason of its interstate operations and that was in excess of the ICC standards referred to in the first sentence.

There is no need in this case to decide whether the use of the new wording ("State registration requirement") in the second sentence of 49 U.S.C. 11506(b)(1982) was meant to have any broader preemptive effect than its predecessor. The 1982 statute was in turn superseded by the current SSRS provision in 1991, and as explained below (see pp. 18-20, *infra*), the preemptive scope of the current provision plainly is broader than the 1965 version. But whatever the scope of the 1982 version while it was in effect, there is no indication that it was either intended or understood to introduce broad preemption in traditional areas of state regulation, such as state requirements associated with the plating and licensing of individual motor vehicles, even though such provisions might literally constitute "State registration requirement[s]." Cf. *Scheiner*, 483 U.S. at 282 (noting that Pennsylvania's "vehicle registration fee has its counterpart in every other State and the District of Columbia").

2. In 1991, Congress extensively revised the statutory provision governing state registration requirements for carriers operating in interstate commerce. The new statute, now codified at 49 U.S.C. 14504, establishes the current SSRS registration system and specifies in considerable detail the permissible scope of the standards the Secretary of Transportation may adopt to govern state registration requirements under the SSRS system. See 49 U.S.C. 14504(c); pp. 4-5, *supra*.

Significantly, moreover, Congress in 1991 also revised the language specifying which state registration requirements would and would not constitute an unreasonable burden on interstate commerce. See 49 U.S.C. 14504(b). The relevant subsection in the 1982 version of the statute had stated, in its first sentence, that any requirement by a State that a motor carrier subject to federal regulation "*register the certificate or permit issued to the carrier*" by the ICC would not constitute an unreasonable burden on interstate commerce if the state requirement conformed to standards issued by the ICC. See 49 U.S.C. 11506(b) (1982) (emphasis added). The first sentence in subsection (b) of the current 49 U.S.C. 14504 is written more broadly. It provides: "The requirement of a State that a motor carrier, providing transportation" subject to federal jurisdiction, "*must register with the State*" is not an unreasonable burden on interstate commerce when "completed under standards of the Secretary under subsection (c)"—*i.e.*, when completed under the standards governing the SSRS (emphasis added). The second sentence of Section 14504(b) then provides that "[w]hen a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden" on interstate commerce. Those two sentences of the current Section 14504(b), read together, make clear that state requirements that interstate carriers "must register with the State" are preempted as a general matter if they do not conform to the standards governing the SSRS, whether or not those state requirements are specifically worded in terms of a carrier's registration of its *federal certificate* with the State.

There is, however, no indication that the current Section 14504(b), any more than its predecessor, was intended to preempt state laws and fees in traditional areas of state regulation, such as those governing registration and license-plating of trucks under the IRP. Rather, Section 14504(b) is most naturally read as prohibiting state registration require-

ments that are imposed on interstate carriers *by reason of* their operation in interstate commerce, except as authorized under the SSRS itself.[6]

C. Because MCL § 478.2(2) Imposes Distinct Burdens On A Class Of Interstate Motor Vehicles, Based On The Interstate Character Of Their Operations, It Is Preempted By 49 U.S.C. 14504

Because MCL § 478.2(2)'s $100 annual fee is imposed *only* on vehicles "operating entirely in interstate commerce," it effects precisely the singling out of interstate commerce for burdensome additional state requirements that 49 U.S.C. 14504(b) and the $10-per-vehicle SSRS cap are intended to

[6] Until it was repealed by the 1995 ICC Termination Act (see p. 6, *supra*), former 49 U.S.C. 10521(b)(4) (1994) provided that, with isolated exceptions not relevant here, the Title 49 provisions governing motor carriage did not "affect the taxation power of a State over a motor carrier." The House Report accompanying the Motor Carrier Act of 1980 expressed the understanding that the relevant federal statutory provisions

> do not apply to that body of taxes known as highway user taxes that are levied on owners or operators of motor vehicles because of their use of public highways. These highway user taxes include, but are not limited to, motor fuel taxes, registration fees, driver licenses, vehicle user taxes, ton-mile taxes, and other motor vehicle related taxes; the proceeds of these taxes, for the most part, are expended through a State highway fund or otherwise earmarked for highway construction, maintenance, or operation.

H.R. Rep. No. 1069, 96th Cong., 2d Sess. 45 (1980). A former ICC regulation similarly disclaimed any intent on the part of the agency "to affect the collection or method of collection of taxes or fees by a State from motor carriers for the operation of vehicles within the borders of such State." 49 C.F.R. 1023.104 (1991); see J.A. 84. None of those provisions suggests, however, that States have broad authority to single out or discriminate against interstate commerce by imposing upon interstate carriage burdens that are not placed upon intrastate transportation. The statutory and regulatory provisions governing state registration of interstate carriers' federal operating permits speak directly to that question, and those provisions have always imposed strict limits on the amount of fees that may be charged for such registration.

prevent. The fee imposed by MCL § 478.2(2) is not in terms a charge for the filing by the carrier of its proof of insurance (the only filing for which a fee may be charged under the SSRS), or even for the filing of any of the other items of information (*i.e.*, evidence of the interstate carrier's federal registration and the name of a local agent for service of process) that the carrier must submit to the registration State under the SSRS. See 49 U.S.C. 14504(c)(2)(A)(i) and (iv). The fee is triggered, however, by the very conduct—a motor carrier's transportation of goods in interstate commerce—that is the basis for the carrier's registration in a single State under the SSRS and the assessment of SSRS fees. The $10-per-vehicle SSRS limit would be deprived of any practical effect if States could assess a larger fee upon the same class (or a subclass) of the vehicles covered by the SSRS, based on the same criterion (operating in interstate commerce) that governs the SSRS process, simply by labeling the fee as a charge for something other than the filing of the specific information identified in the federal statute.

The relevant provision of Michigan law literally imposes a "State registration requirement" (49 U.S.C. 14504(b)) in addition to and different from that permitted under the SSRS, and it is therefore preempted. Michigan law requires an interstate carrier, before its Michigan-plated vehicles that are engaged entirely in interstate commerce may travel on the State's roads, to submit a non-SSRS form to the MPSC to obtain a decal for any such vehicle (J.A. 67 n.*); to list specific vehicles on that form (*ibid.*); and to pay a $100 fee for each such vehicle (MCL § 478.2(2)).[7] See also MCL § 478.7(1) (carrier must register with MPSC and pay all required

[7] As noted above, the SSRS system specifically does not permit a requirement that specific vehicles be identified or that decals be obtained or displayed for individual vehicles. See pp. 4-5, *supra*.

registration and vehicle fees before engaging in interstate or foreign commerce in Michigan). And because Section 478.2(2) applies only to vehicles operating in interstate commerce, it is precisely the *type* of "State registration requirement" that Congress sought to preclude. The $100-per-vehicle fee is plainly "in excess of the standards of the Secretary" of Transportation, which impose a $10-per-vehicle limit, and it is therefore expressly preempted by 49 U.S.C. 14504(b).

Moreover, even if the term "State registration requirement" in 49 U.S.C. 14504(b) did not literally apply to the $100-per-vehicle fee in MCL 478.2(2), Michigan's assessment of that fee on vehicles "operating entirely in interstate commerce" would be impliedly preempted because it directly subverts Congress's efforts to minimize burdens targeted specifically at interstate transportation by motor carrier. This Court has made clear that state law may be preempted based on an implied conflict with federal law, even when the relevant federal statute contains an express preemption provision that does not cover the state law at issue. See *Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 867-874 (2000). The fee imposed by MCL § 478.2(2) impliedly conflicts with 49 U.S.C. 14504 because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Geier*, 529 U.S. at 873 (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). The clear inconsistency between MCL § 478.2(2) and the congressional policy judgment reflected in the SSRS provides an independent basis for holding Section 478.2(2) to be preempted, whether or not the $100-per-vehicle fee is a "State registration requirement" within the meaning of 49 U.S.C. 14504(b).

D. The Fact That The Contested Fees Are Used After Collection To Finance The State's Regulatory Programs Is Irrelevant To The Preemption Analysis

The Michigan Court of Appeals held that the $100-per-vehicle annual fee imposed by MCL § 478.2(2) is not preempted by 49 U.S.C. 14504(b) because the challenged assessment is a "regulatory" rather than a "registration" fee. J.A. 83-85. The court observed that the fee under MCL § 478.2(2) is "imposed for the administration of the [state Motor Carrier Act], particularly covering costs of enforcing safety regulations." J.A. 83. The court held that, "[i]f the purpose of a fee is to regulate an industry or service, it can be properly classified as a regulatory fee." *Ibid.* That analysis is wholly misconceived.

Whatever the precise scope of the term "State registration requirement" in 49 U.S.C. 14504(b), nothing in the text or purposes of the statute suggests that its preemptive effect can turn on the use to which a particular state motor vehicle fee will be put *after* it has been collected. Section 14504, like its statutory and regulatory predecessors, limits the amount of the fee that a State may collect in certain circumstances but places no constraint on the State's subsequent use of the funds. Section 14504 has neither the purpose nor the effect of requiring that motor-vehicle assessments be spent for highway-related purposes; it serves instead to ensure that such assessments do not place a disproportionate burden on interstate commerce. MCL § 478.2(2) on its face effects precisely the singling out of interstate carriage that the $10-per-vehicle SSRS registration limit was intended to prevent. The statute is therefore preempted by federal law, regardless of the use to which the fees are subsequently put.[8]

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[8] Michigan law specifically reserves for the State's truck safety fund a segment (not less than 90% of any amounts in excess of $1,400,000 in a

E. The Fact That MCL § 478.2(2)'s Coverage Is Restricted To Vehicles License-Plated In Michigan Does Not Eliminate The Conflict With Federal Law

As the State emphasizes (see Br. in Opp. 2, 11, 17, 19, 20), the fee at issue in this case is imposed solely upon commercial motor vehicles license-plated in Michigan. That limitation on the scope of MCL § 478.2(2)'s coverage, however, does not save it from preemption.

1. As a general matter, the federal ban on "State registration requirement[s]" that "impose[] obligations in excess of the standards of the Secretary" of Transportation (49 U.S.C. 14504(b)), and the $10-per-vehicle limit on the fee that a State may charge under the SSRS (49 U.S.C. 14504(c)(2)(B)(iv)(III)), do not restrict a State's authority to collect otherwise lawful fees in connection with the separate process of registering and license-plating individual motor vehicles under state law. Thus, if the Michigan Legislature had simply increased by $100 each of the registration fees set forth in MCL § 257.801 (West 2001 & Supp. 2004), no SSRS preemption question would arise.[9] Unlike an ordinary license-plating charge, however, the fee imposed by MCL § 478.2(2) is assessed not upon motor vehicles generally, or upon a particular class of motor vehicles defined by weight or other physical attribute, but only upon motor vehicles "operating entirely in interstate commerce." Section 478.2(2) therefore effects precisely the singling out of

given year) of the SSRS fees that the State collects. MCL § 478.7(5); see J.A. 27 (State's affiant describes the implementation of that requirement). The statutory requirement that a portion of the State's SSRS fees be devoted to highway-related purposes simply highlights the illusory nature of the claimed distinction between "registration" and "regulatory" fees.

[9] With respect to vehicles covered by the IRP, however, that additional $100 increment would need to be apportioned among the States in which the trucks traveled according to the miles they traveled in each State. See pp. 3-4, 13, *supra*.

vehicles operating in interstate commerce that the SSRS $10-per-vehicle limit was intended to prevent.

Nothing in the text or history of 49 U.S.C. 14504 suggests that the SSRS fee limit is inapplicable to vehicles license-plated in the charging State. Any such exception would disserve Congress's objective of preventing the imposition of exorbitant fees specifically targeted at interstate carriage. Indeed, Michigan does not assert a right, *in its capacity as an SSRS registration State*, to charge a fee of greater than $10 for Michigan-plated vehicles. Its argument instead is that 49 U.S.C. 14504 is inapplicable here because the fee imposed by MCL § 478.2(2) is not framed as a charge for the registration of federal operating authority or of the other information specified in 49 U.S.C. 14504(c)(2)(A). But if we are correct in our basic submission (see pp. 14-20, *supra*)—*i.e.*, if 49 U.S.C. 14504 generally preempts any state registration requirement or fee that is imposed on vehicles *because* they operate in interstate commerce, even if the fee is not in terms a charge for registration of SSRS-related information—then the State's decision to impose such a charge only upon Michigan-plated vehicles cannot justify a different result here.

2. The preemption issue in this case is complicated by MCL § 478.2(2)'s immediately preceding subsection, MCL § 478.2(1). On its face, that subsection appears to impose a $100 annual fee on *every* "self-propelled motor vehicle operated by or on behalf of [a] motor carrier" operating in the State. Section 478.2(1) has been interpreted and applied by Michigan officials, however, as covering only those commercial motor vehicles that undertake point-to-point hauls within the State. See note 5, *supra*. Section 478.2(1) is not limited to vehicles license-plated in Michigan, but it does encompass all Michigan-plated vehicles that make intrastate hauls—which is to say, all Michigan-plated commercial vehicles that are *not* covered by MCL § 478.2(2).

The apparent practical effect of MCL § 478.2(1) and (2), taken together, is thus to impose a $100 fee (in addition to the much larger plating fees separately required by MCL § 257.801) on *every* commercial motor vehicle license-plated in Michigan, regardless of the nature of its operations. It therefore might be argued that MCL § 478.2(2) is not preempted by the SSRS because it is part of a larger statutory regime that, considered as a whole, does not discriminate against interstate commerce. For a variety of reasons, however, we believe that the preemption question presented in this case is properly resolved by considering MCL § 478.2(2) on its own terms, without reference to the preceding subsection.

a. Neither the Michigan Court of Appeals' opinion nor the State's brief in opposition suggests that MCL § 478.2(1) is relevant to the proper disposition of petitioners' preemption claim. The State's brief in opposition does emphasize that MCL § 478.2(2) applies only to vehicles license-plated in Michigan. The thrust of the State's argument, however, is that, so long as the fee is levied only on trucks with a significant regulatory "presence" in Michigan, as evidenced by license-plating within that State, the SSRS does not preclude the Legislature from imposing distinctive burdens on particular vehicles based on their operation in interstate commerce. See, *e.g.*, Br. in Opp. 17, 20. Michigan appears to construe 49 U.S.C. 14504 to preempt only those state requirements that expressly pertain to registration of the specific information provided by the carrier during the SSRS process. See Br. in Opp. 6. In light of the manner in which the State has litigated the issue on which the Court granted certiorari, this case squarely presents only the question whether SSRS preemption is in fact so limited, or whether the preemptive effect of Section 14504 extends to other laws that impose burdens on interstate carriers specifically *because* their vehicles operate in interstate commerce.

b. The opacity of the overall state statutory scheme provides further reason for considering MCL § 478.2(2) on its own terms. MCL § 478.2(1), on its face, would appear to impose a $100 annual fee on *all* trucks traveling in Michigan, including the Michigan-plated motor vehicles that operate solely in interstate commerce and are therefore covered by MCL § 478.2(2). If MCL § 478.2(1) were read in that manner, Section 478.2(1) and (2) would discriminate against interstate commerce even when taken together, by imposing *two* $100 fees rather than one upon those Michigan-plated trucks that conduct wholly interstate operations. As explained above, the MPSC does not in practice construe and apply MCL § 478.2(1) to cover vehicles operating entirely in interstate commerce. See note 5, *supra*. And for purposes of deciding *American Trucking Ass'ns* v. *Michigan Public Service Commission*, No. 03-1230, in which the constitutionality of MCL § 478.2(1) is directly at issue, it is appropriate for this Court to accept the shared understanding of the parties to *that* case that the State assesses the Section 478.2(1) fee only upon vehicles that undertake point-to-point hauls within Michigan. Given the State's failure to rely upon Section 478.2(1) in *this* case, however, there exists no similar justification for invoking a consideration (license-plating in Michigan) that does not appear in the text of Section 478.2(1) as a basis for disregarding the explicit terms of MCL § 478.2(2) that single out trucks operating in interstate commerce for assessment of a $100 fee.

c. Moreover, even as it appears to have been interpreted and applied by Michigan officials, MCL § 478.2(1) is not framed as a condition upon the issuance of a Michigan license plate. Rather, under the State's apparent administrative practice, the trigger for the Section 478.2(1) fee is the conduct of a particular type of trucking operation (point-to-point hauls within Michigan), not the decision to obtain a license plate in Michigan. As a result, Section 478.2(1) requires the

payment of a $100 fee for trucks license-plated in other States, as well as for Michigan-plated vehicles, if those trucks engage in point-to-point hauls in Michigan.

Under the IRP, fees for the registration of commercial motor vehicles are generally apportioned among the States in which a vehicle operates, based on the relative mileage traveled in each State. See pp. 3-4, 13, *supra*. Michigan law does not appear, however, to provide for the apportionment of fees collected under MCL § 478.2(1) or (2). See MCL § 257.801g (authorizing apportionment, when the IRP is applicable, of registration fees that would otherwise be assessed under MCL § 257.801(1)(j) or 801(1)(k) (West 2001 & Supp. 2004)); J.A. 64 (State's affiant recognizes that fees collected under MCL § 478.2(1) are not apportioned under the IRP). The State's apparent failure to apportion fees collected from interstate carriers under MCL § 478.2(1) and (2) reinforces the conclusion that Michigan regards those fees as something other than a license-plating charge.

There is consequently no basis to infer that the Michigan Legislature conceived of MCL § 478.2(1) and (2) as parts of an integrated scheme to assess a uniform $100 annual fee on every commercial motor vehicle license-plated in the State. It is therefore appropriate to take MCL § 478.2(2) at face value, as reflecting the Legislature's deliberate policy choice to impose distinct burdens on Michigan-plated vehicles that "operat[e] entirely in interstate commerce" and to make such interstate operations within the borders of Michigan the legal incidence of the fee. See *Commonwealth Edison Co.* v. *Montana*, 453 U.S. 609, 626 (1981) (focusing on the "operating incidence" of tax) (quoting *General Motors Corp.* v. *Washington*, 377 U.S. 436, 440-441 (1964)); cf. *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450, 458-460 (1995) (validity of state tax on transactions in Indian country turns on the "legal incidence" of the tax, rather than on a judicial assessment of the tax's likely economic conse-

quences). Because the imposition of such burdens is flatly inconsistent with the limitations placed upon the States by 49 U.S.C. 14504, MCL § 478.2(2) is preempted by federal law.

CONCLUSION

The judgment of the Michigan Court of Appeals should be reversed.

Respectfully submitted.

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